

in the
Supreme Court
of the
United States

OCTOBER TERM 1976

Supreme Court, U. S.

R I L E D

MAY 6 1977

MICHAEL RODAK, JR., CLERK

CASE NO. 76-1440

ALEX GOLDSTEIN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

SUPPLEMENTAL APPENDIX

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APPENDIX F

(Thereupon, the following proceedings were had out of the presence of the jury:)

THE COURT: Good morning, gentlemen.

Counsel, do you have a matter to present this morning to the Court?

MR. ULLMAN: Your Honor, before we recessed on Thursday, you had instructed Mr. Arrington to return to the Court and he is here now with the report.

While Mr. Arrington is coming in—

THE COURT: Well, you can tell me what the problem is without him being present.

MR. ULLMAN: No problem, Your Honor.

THE COURT: All right.

I have a motion that has just been handed me by my clerk and signed by Mr. Strauss, wherein he has asked the Court for an order recessing the trial to permit the defendant Goldstein to secure depositions from the Rieble Brothers over in Germany.

MR. STRAUSS: Your Honor, may I suggest that it was for the Bahamas or that they would come to the trial and testify, if they were sure that they would not be arrested at that time and this assurance I could not give them.

THE COURT: Did you talk to them while you were in Germany?

MR. STRAUSS: Yes, sir, I did.

THE COURT: Your motion is denied.

MR. STRAUSS: May I make a proffer?

THE COURT: No, sir, I don't want to hear one word about it.

You have had a full-blown, gift-edge, fourteen karat opportunity to talk to these people and to accomplish your purpose, gather the information that you required, and then to line up your witnesses, and for you at this late date to come in here with something like this when you knew very well all this evidence that existed up to this point would be forthcoming—no one with any intimate knowledge of this case could possibly avoid knowing the situation that we have today insofar as the state of the evidence that would exist.

MR. STRAUSS: Your Honor, they were willing to come to the Bahamas to give the deposition on a Saturday, which would not interrupt this Court.

My suggestion to the Court is the motion that these witnesses refuse to give any kind of testimony in Germany, and it is only by intensive phone calls to them and requesting their assistance—this was because of the many matters which have been brought to the Court which are inaccurate.

THE COURT: What is the position of the Government?

MR. ULLMAN: Your Honor, we oppose it.

THE COURT: And the position of other defense counsel?

MR. KLEIN: No position.

MR. PEARSON: No position.

THE COURT: Denied.

You were given an opportunity to secure depositions. You were right there in Germany and you talked to these people.

MR. STRAUSS: At which time they refused, sir.

THE COURT: If they refused, then I have no confidence that they will change their minds now.

They are indicted defendants in this case, and they are alleged to be co-conspirators and guilty of substantive counts.

You talked to them and you were sent there for that purpose, and to come in now with this sort of belated thing is not proper.

Today is the 8th—it's denied.

If I have any discretion with respect to a matter of this kind, I have exercised it negatively and I hope properly.

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. FL-74-69-CR-CF

UNITED STATES OF AMERICA,
vs.

LEONARD NIKOLORIC, et al.,
Defendants.

MOTION TO RECESS TRIAL AND OBTAIN
DEPOSITIONS OF THE DEFENDANTS,
JURGEN REIBLE AND VOLKER REIBLE
IN THE BAHAMAS

COMES NOW the Defendant, ALEX GOLDSTEIN, by and through his undersigned counsel, and moves this Honorable Court to grant leave to Defendant Goldstein to recess the above captioned trial, currently in progress, to obtain the deposition(s) of JURGEN REIBLE and/or VOLKER REIBLE, defendants herein, and as grounds therefore sets forth as follows:

1. As a result of the intense effort of the undersigned counsel, correspondence was received from the co-defendant, VOLKER REIBLE, same being attached hereto and incorporated by reference herein, as Exhibit "A", wherein said statement reflects that the Reible brothers will attend depositions in the United States in the event they are not arrested, or in the alternative in the Bahamas, so that all matters may be presented to this jury.
2. That numerous telexes, conversations, and the transfer of monies were handled only by the Reible brothers and, therefore, their testimony pertaining to such matters are extremely material and relevant to the issues now pending before this Court.
3. That no prejudice can attach in that the Reible brothers are classified as "co-defendants" and all parties are aware of the evidence said deponents will elicit.
4. That in the interest of justice and to guarantee a fair and impartial trial to the Defendant, Goldstein, pursuant to the provisions of the Sixth Amendment to the United States Constitution, it is respectfully requested that this Honorable Court grant leave to obtain said depositions in the Bahamas on a date certain prior to submitting the pending issues to this jury.

I HEREBY CERTIFY that a true copy of the foregoing Motion for Leave to Take Depositions was hand delivered to all counsel of record in open Court this 8 day of July, 1975.

Respectfully submitted,

HIGHSMITH, STRAUSS &
NELSON, P.A.
Attorneys for Defendant Goldstein
Suite 17-3, Tower Three
825 South Bayshore Drive
Miami, Florida 33125
Telephone: 358-6600

By: /s/ Ronald I. Strauss

RONALD I. STRAUSS

cc: Barry Garber, Esq.
Daniel Pearson, Esq.
Theodore Klein, Esq.
Jerome B. Ullman, Esq.

APPENDIX H

[TITLE OMITTED]

ORDER

(Filed June 20, 1975)

In reviewing the Court file in preparation for the Pretrial Conference on June 23, 1975, the Court has observed several motions upon which Orders have not been entered including a motion to suppress grand jury testimony and a motion to attend the taking of depositions in Germany, both of which were filed by the defendant Miles Dearden, Jr., through his counsel Theodore Klein, Esq.

The motion for suppression of grand jury testimony was filed February 3, 1975. This motion was set for hearing on May 19, 1975, along with a Pretrial Conference which was likewise calendared for that date. At said hearing and conference, Mr. Klein was not present, but the defendant Dearden, Jr., was represented by Erwin Block, Esq. Counsel for the government announced that the government did not intend to use the testimony of Dearden, Jr. before the grand jury at the trial except to the extent that it may be used for the purpose of impeachment. Today Mr. Klein has announced to counsel for the government that he is withdrawing the said motion.

Regarding defendant Dearden, Jr.'s motion for an Order authorizing his attendance of the depositions in Germany, the Court was advised that that motion has likewise been withdrawn and requires no ruling.

Both of said motions having been withdrawn by the movant, no Order is required from the Court.

DONE and ORDERED at West Palm Beach, Florida this 20th day of June, 1975.

By: /s/ Charles B. Fulton

Chief Judge

cc: U.S. Attorney
 Barry Garber, Esq.
 Dan Pearson, Esq.
 Theodore Klein, Esq.
 John Fisher, Esq.
 Ronald Strauss, Esq.

CASE NO. 74-69-CR-CF

CRIMINAL DOCKET PROCEEDINGS

July 10 GOLDSTEIN: Proffer with reference to Depositions of Reible Brothers. (Before CF 7/09/75). 115

10 GOVT.: Response to Deft. Goldstein's Motion to Recess Trial and Obtain Depositions 116

10 ORDER: After more than two weeks of trial and at a time when the govt. was concluding its case in chief, counsel for Goldstein moved the Court to recess the trial so that he may take the deposition of the Reible Brothers somewhere in the Bahama Islands. Every possible consideration and advantage for gathering evidence and preparing for trial has heretofore been accorded Goldstein and counsel by both counsel for govt. and the Court. For the reasons stated, this motion is DENIED. (7/10/75-CB). MR-141. 117

APPENDIX I

[TITLE OMITTED]

ORDER

(Filed July 10, 1977)

Prior to trial government counsel in this case literally opened the government's file. Volumes of documentary evidence have been revealed and inspected and copied.

Counsel for defendant Goldstein was authorized and permitted to take depositions of witnesses in Germany, and elsewhere in Europe. This request was not opposed by government counsel but received government cooperation. Goldstein's counsel was literally given the run of Germany and Switzerland to search for and depose witnesses.

It appears that on one occasion counsel for Goldstein indicated a desire to view certain documents and possibly depose witnesses at a certain place but did not appear, although counsel for the government was there and waited for several hours.

Although Goldstein's counsel desired to secure certain Swiss bank records, these were unavailable because of International Treaties, or the lack of them. There was no opposition from the government in this effort, it appearing that the government desired and could use the same records.

While in Germany counsel for Goldstein conferred with the Reible Brothers, with whom the defendant Goldstein was acquainted. The Reible Brothers are former business associates of the defendant Goldstein. Obviously, the Reible Brothers either were not requested to depose or declined to do so. They are charged as defendants in many of the counts of this indictment, but are beyond the jurisdiction of the Court and the reach of the government, extradition having apparently failed.

After more than two weeks of trial and at a time when the government was concluding its case in chief, counsel for Goldstein moved the Court to recess the trial so that he may take the deposition of the Reible Brothers somewhere in the Bahama Islands.

Every possible consideration and advantage for gathering evidence and preparing for trial has heretofore been accorded Goldstein and his counsel by both counsel for the government and the Court.

For the reasons stated, this motion is denied.

DONE and ORDERED at Miami, Florida, this 10 day of July, 1975.

By: /s/ Charles B. Fulton

Chief Judge

cc: All counsel.

APPENDIX J

LAW OFFICES
HIGHSMITH, STRAUSS & NELSON
PROFESSIONAL ASSOCIATION
17TH FLOOR — TOWER THREE
825 SOUTH BAYSHORE DRIVE
MIAMI, FLORIDA 33131

July 14, 1975

Honorable Charles B. Fulton,
Chief Judge, United States District Court
Southern District of Florida
P. O. Box 01590
Miami, Florida 33101

Re: United States v. Nikoloric, et al.,
Case No: FL-74-69-Cr-CF
Order dated July 10, 1975

Dear Judge Fulton:

The above described Order was received by the undersigned during the trial of this cause on July 10, 1975.

I believe it is incumbent on me to clarify paragraph three of the first page of that Order. At no time, did I ever not attend a deposition of witnesses in Germany by prearrangement or otherwise. I attended all depositions, which were scheduled, and which were discussed.

With reference to reviewing certain documents, the undersigned advised the two Assistant United States at-

torneys, during the deposition of Mr. Mattauch, that there existed a "FLF clearing account" which did not have a bank number, and said account was handled by Bank Widermann of Switzerland. That the Government was unaware of the existence of the account, and the documents pertaining thereto. I further advised the assistant United States attorneys, that the German prosecutor's office in Manheim, had the complete records of Bank Widermann, and there the Government would find the records that I had described, and said records would establish that an excess of \$146,000.00 were returned to German investors by agreement of NUSI GMBH (Baden-Baden) and Bank Widermann, after it was discovered that there was no longer insurance possibilities for the First Liberty Fund investors. At that time, I had already in my possession the clearing account records, but in order to verify and to establish authenticity, it was suggested that the Government personally review the documents which were in possession of the German prosecutor, who had purportedly obtained same from the Courts in Switzerland. The following day, I was advised by Mr. Ullman that they had indeed discovered the records and asked if I would desire to review the records with them at the prosecutor's office, and indeed had made the arrangements for my review. After consultation with my client, Alex Goldstein, I returned the call to the German prosecutor's office in Manheim, and advised Mr. Ullman that I had complete records in my possession, and requested that they either obtain the copies of said records for use in the United States, or in the alternative I would present copies of the records at my expense when I returned to the United States.

That, in fact, subsequent to my return to the United States, I transmitted two letters, the first of which the Government advised they had not received, which attached copies of the Bank Widermann clearing account records for the Government's perusal. That further, the undersigned did request and obtain an interview with the Raible brothers while I was in Germany to attend the depositions, and at such time, I requested and had the attendance of the court appointed court reporter, Richard Gurian, in the event the Reible brothers would wish to give me a sworn statement. Furthermore, in attendance at the meeting was the approved translator. Although the court reporter and translator sat through the entire meeting between myself and the Reible brothers, there was not a willingness on behalf of the Reible brothers to transcribe our conversations, sworn or unsworn.

Furthermore, the Order of July 10, 1975 sets forth that "extradition having apparently failed", which, to my understanding, is not in accord with the procedures utilized by the United States Government. It is my understanding, that extradition was never attempted and that further, the United States Government did not comply with German law by translating the Indictment into German, but merely mailed a copy to the Reible brothers. I have been advised that the Government has correspondence from the Reible brothers pertaining thereto. It is my further understanding that there is no Court order denying extradition from any German court, nor any attempt made through the United States Embassy or Consulate to extradite the Reible brothers.

It is suggested that if the Court desires further elaboration or clarification of the above, that an evidentiary hearing be scheduled so that the matters set forth hereinabove may be made formally part of this record. In the alternative, it is requested that this correspondence be filed as part of the record in this cause.

Very truly yours,

RONALD I. STRAUSS

By: /s/ Ronald I. Strauss

RIS:mn

cc: Jerome B. Ullman, Esq.;
Theodore Klein, Esq.;
Barry Garber, Esq.;
Daniel Pearson, Esq.

APPENDIX K
DOCKET ENTRIES

	Date	Proceedings	Pages
	1975		
	June 23	NIKOLORIC; DEARDEN, JR.; DEARDEN, SR.; HAMILTON AND GOLDSTEIN: ORDER FOR DISMISSAL (Cont'd). the US Attorney for the Southern Dist. of Florida, hereby DISMISSES the Counts, 2, 5, 6, 11, 12, 15, 19, 20, 22, 40 and 42 against the named Defts. LEAVE OF COURT IS GRANTED. (6/23/75-CF). MR-141.	111
	July 10	GOVT.: Memorandum on Conspiracy.	112
10		GOVT.: Memorandum of Law on the Admissibility of One Co-Conspirator's Acts and Declarations Against the Other Co-Conspirators.	113
10		GOVT.: Memorandum on Mail Fraud.	114
10		GOLDSTEIN: Proffer with reference to Depositions of Reible Brothers. (Before CF 7/09/75).	115
10		GOVT.: Response to Deft. Goldstein's Motion to Recess Trial and Obtain Depositions	
10		ORDER: After more than two weeks of trial and at a time when the govt. was concluding its case in chief, counsel for Goldstein moved the Court to recess the trial so that he may take the deposition of the Reible Brothers somewhere in the	116

DOCKET ENTRIES (cont.)

Date	Proceedings	Pages
	Bahama Islands. Every possible consideration and advantage for gathering evidence and preparing for trial has heretofore been accorded Goldstein and counsel by both counsel for govt. and the Court. For the reasons stated, this motion is DENIED. (7/10/75). MR-141.	117
July 24	Following pleadings received in Clerk's office on 7/24/75.	
June 23	DEARDEN, SR.: Motion to suppress and memo. of law.	118
23	GOLDSTEIN: Issue presented.	119
23	GOLDSTEIN: Memo. of law in response to govt. intention to introduce bank records at time of trial.	120
23	ALL DEFTS. & GOVT.: Stipulations Defts. waive all objections to authenticity & chain of custody of the following documents now in govt. file. See pleading for details.	121
23	DEARDEN, SR.: Stipulation. Deft. waives all objections to authenticity & chain of custody of the following documents now in the govt. file. See pleading for details.	122
23	GOVT.: Letter to Ronald I. Strauss, Esq., govt. is prepared to waive approximately 41 objections made during the depositions.	123

DOCKET ENTRIES (cont.)

Date	Proceedings	Pages
23	NIKOLORIC: Stipulation Re Stock Ownership.	124
23	GOLDSTEIN: Rule 10 G — certificate of good faith, Rule 2, Certificate of service.	125
23	GOLDSTEIN: Motion to compel production pursuant to "standing discovery order" and Brady v. Maryland. Presented and argued at pre-trial. DENIED. (6/23/75-CF) R141.	126
June 24	NIKOLORIC, DEARDEN, JR., DEARDEN, SR., HAMILTON, & GOLDSTEIN: Transcript of pretrial conference taken 2/7/75.	127

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the within Supplemental Appendix to the United States Court of Appeals for the Fifth Circuit was mailed this 1st day of April, 1977 to the office of the Solicitor General, Department of Justice, Room 5614, Washington, D.C., 20530.

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By RONALD I. STRAUSS
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